

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

April 30, 2009

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No. 08-40534  
Conference Calendar

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

RANDALL LEE THOMPSON

Defendant-Appellant

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:06-CR-2-ALL

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Before JONES, Chief Judge, and JOLLY and ELROD, Circuit Judges.

PER CURIAM:\*

Randall Lee Thompson appeals his guilty plea conviction and sentence for possession and distribution of pseudoephedrine. Thompson argues that the district court erred by denying him a downward departure under U.S. Sentencing Guidelines Manual (U.S.S.G.) § 5K2.12 or U.S.S.G. § 5K2.13 based on diminished capacity or mental duress.

Thompson does not argue and the record does not indicate that the district court believed that it was without authority to depart from the Guidelines.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Because the district court did not misapprehend its authority, we lack jurisdiction to review the court's denial of a downward departure. *See United States v. Sam*, 467 F.3d 857, 861 (5th Cir. 2006); *United States v. Buck*, 324 F.3d 786, 797-98 (5th Cir. 2003).

DISMISSED.